Children's Authority of Trinidad and Tobago

A TEACHER'S GUIDE

TO THE NEW CHILD PROTECTION LEGISLATION

ISSUES OF SPECIAL RELEVANCE WITH RESPECT TO THE NEW PACKAGE OF LEGISLATION FOR CHILDREN

OVERVIEW:

Persons ought to be aware of the following with respect to the new package of children's legislation:

1) Who is a child in need of care and protection as identified under **Section 22 of the Children's Authority Act**?

2) The categories of persons who have a mandatory duty to report the commission of a sexual offence against a child, to the police. **Section 31 of the Sexual Offences Act Chapter 11:28** as amended by the **Children Act 2012**.

3) Persons identified as occupying positions of trust in **section 30 of the Children Act 2012**.

4) Corporal Punishment and Reasonable Punishment.

5) There are several new offences against children as identified in the Children Act 2012.

6) Age of Criminal Responsibility

7) The Decriminalisation of sexual activity between children

CHILDREN IN NEED OF CARE AND PROTECTION

Section 22 of the Children's Authority Act provides that a child is in need of care and protection where the child –

(a) has neither parent nor guardian who is fit to exercise care and guardianship;

(b) is lost or has been and remains abandoned by his parent or guardian;

(c) whose parent or guardian is prevented by –
  (i) reason of mental or bodily disease;
  (ii) infirmity or other incapacity; or
  (iii) any other circumstances,

  from providing for his up-bringing, and there is no available person or persons capable, fit or willing to undertake the care of such child;

(d) is exposed to moral danger;

(e) is beyond the control of his parent or guardian;

(f) is ill-treated or neglected in a manner likely to cause him suffering or injury to his health;

(g) is destitute or is wandering without any settled place of abode and without visible means of subsistence;

(h) is begging or receiving alms;

(i) is found loitering for the purpose of begging or receiving alms;

(j) frequents the company of any criminal; or

(k) frequents the company of any common or reputed prostitute not being the mother of the child.

MANDATORY REPORTING

With the proclamation of the Children Act 2012**, section 31(1)** of the **Sexual Offences Act Chapter 11:28** reads as follows:

Any person who –

(a) Is the parent or guardian of a minor;
(b) Has the actual custody, charge or control of a minor;
(c) Has the temporary custody, care, charge or control of a minor for a special purpose, as his attendant, employer or teacher, or in any other capacity; or
(d) Is a medical practitioner, or a registered nurse of midwife, and has performed a medical examination in respect of a minor,

and who has reasonable grounds for believing that a sexual offence has been committed in respect of that minor under this Act or sections 9,10,18,19 of the Children Act 2012, shall report the grounds for his belief to a police officer as soon as reasonably practicable.

NB: Sections 9 & 10 of the Children Act 2012 deal with Female Genital Mutilation and Sections 18 and 19 deal with sexual penetration of a child and sexual touching of a child respectively.

Penalties for failing to report:

Section 31(2) provides:

Any person who without reasonable excuse fails to comply with the requirements of subsection (1), is guilty of an offence and is liable on summary conviction to a fine of fifteen thousand dollars or to imprisonment for a term of seven years or to both such fine and imprisonment.

Freedom from liability once report made in good faith:

Section 31(3) provides:

No report made to a police officer under the provisions of section 31(1) shall, if such report was made in good faith for the purpose of complying with those provisions, subject the person who made the report to any action, liability, claim or demand whatsoever.

POSITIONS OF TRUST

PART VI OF THE CHILDREN ACT 2012 (OTHER SEXUAL OFFENCES)

PERSONS IN A POSITION OF TRUST:

Section 30 of the Children Act 2012 provides:

For the purpose of this Part a person is in a **position of trust** in relation to a child if he –

(i) is a constable, medical practitioner, nurse, social worker, teacher, scout master, troop leader, clergyman, spiritual leader, driver, sports coach or trainer or other person in authority in whose care the child is placed;

Section 29 of the Children Act 2012 provides that persons who are in a position of trust in relation to a child at the time and commit one of the offences listed under Part VI are liable:

Where the offence does not involve penetration:

- on summary conviction to a fine of $50,000 and to imprisonment for 15 years; or
- on conviction on indictment to imprisonment for 25 years.

Where the offence involves penetration:

- on conviction on indictment to imprisonment for life.

*NB: **This Part** deals with THE FOLLOWING offences:*

- *sexual penetration of a child;*
- *sexual touching of a child who is under the age of 16 years;*
- *causing or inciting a child to engage in sexual penetration of a child or sexual touching of a child;*
- *causing or inciting a child to engage in sexual activity with an animal;*
- *engaging in sexual activity in the presence of a child for the purposes of obtaining sexual gratification;*
- *causing a child to watch a sexual act for the purpose of sexual gratification; and*
- *meeting a child following sexual grooming.*

Some Definitions:

Penetration of a child includes:

- the insertion of any body part or any object into a child's bodily orifice; or
- the insertion of a part of a child's body into a person's bodily orifice.

Bodily orifice means anus, vagina, urethra, mouth, ear or nostril.

For the purposes of the Children Act 2012, *penetration, touching or any other activity is sexual* if:

- it is not done for medically recognised purposes
- a reasonable person would consider that the person's purpose in relation to it, is, because of its nature, sexual
- a reasonable person would consider that because of its nature it may be sexual and because of its circumstances or the purposes of any person in relation to it, or both, it is sexual.

THE AGE OF CONSENT

The new Children Act increases the age of consent in relation to sexual penetration to 18 years while the age of consent in relation to sexual touching is 16 years.

CORPORAL PUNISHMENT

Corporal Punishment: Children Act 2012:

Section 4(6): Nothing in this section shall be construed as affecting the right of any parent, teacher or other person having the lawful control or charge of a child to administer reasonable punishment to such a child.

Section 4(7): Reasonable punishment referred to in subsection (6), in relation to any person other than a parent or guardian, shall not include corporal punishment.

This means that while certain persons dealing with a child, for example, a teacher, counsellor etc. can administer reasonable punishment, they **cannot** administer corporal punishment. ***Only a parent or guardian can administer corporal punishment***. Note, however, that even in those circumstances it must be reasonable punishment.

CRUELTY

Cruelty to children: **(Section 4 of the Children Act 2012):**

Where a person who has responsibility for the child:

- wilfully assaults
- ill-treats
- neglects
- abandons or
- exposes the child or causes or procures the child to be assaulted, ill-treated, neglected, abandoned or exposed in such a manner likely to cause the child suffering or injury to his physical, mental or emotional health.

NB: **Section 4(3):** A parent or person who is legally liable to maintain a child shall be deemed to have neglected the child if having been able to provide adequate food, clothing, medical aid or lodging for the child, he failed to do so OR if unable to provide the following he failed to take reasonable steps to procure what is provided under any written law applicable to his circumstances.

A breach of the section prohibiting corporal punishment may be charged as the offence of cruelty, for which the penalties are:

- on summary conviction, a fine of $5000 and imprisonment for 6 years; or
- on conviction on indictment, a fine of $50,000 and imprisonment for 10 years.

AGE OF CRIMINAL RESPONSIBILITY

In Trinidad and Tobago, the age of criminal responsibility is the **age of seven**. This means that a person is *(doli incapax)* deemed incapable of forming the intent to commit a crime if he or she is under the age of seven.

Summary Courts Act Chapter 4:20

Section 2: child means any person who, in the opinion of the Court before whom he appears or is brought, is above seven and under fourteen years of age.

There is however an exception to this rule as it relates to the commission of sexual offences. With respect to sexual offences, the age of criminal responsibility is **age 12**.

Sexual Offences Act Chapter 11:28

Section 26: A person under the age of twelve years is deemed incapable of committing an offence under this Act.

DECRIMINALISATION OF SEXUAL ACTIVITY BETWEEN CHILDREN

There are certain instances where sexual activity between children, who are close in age to each other, may not attract a criminal charge. However, the circumstances which allow for such decriminalisation of sexual activity between children are clearly laid down in the legislation.

Section 20 of the Children Act 2012 provides:

(1) A person sixteen years of age or over but under twenty-one years of age is not liable under section 18 if–

(a) he is less than three years older than the child against whom he is purported to have perpetrated the offence;

(b) he is not in a familial relationship with the child nor in a position of trust in relation to the child;

(c) he is not of the same sex as the child; and
(d) the circumstances do not reveal any element of exploitation, coercion, threat, deception, grooming or manipulation in the relationship.

(2) A person fourteen years of age or over but under sixteen years of age is not liable under section 18 or 19 if–

(a) he is less than two years older than the child against whom he is purported to have perpetrated the offence;
(b) he is not in a familial relationship with the child nor in a position of trust in relation to the child;
(c) he is not of the same sex as the child; and
(d) the circumstances do not reveal any element of exploitation, coercion, threat, deception, grooming or manipulation in the relationship.

(3) A person twelve years of age or over but under fourteen years of age is not liable under section 18 or 19 if–

(a) he is less than two years older than the child against whom he is purported to have perpetrated the offence;
(b) he is not in a familial relationship with the child nor in a position of trust in relation to the child;
(c) he is not of the same sex as the child; and
(d) the circumstances do not reveal any element of exploitation, coercion, threat, deception, grooming or manipulation in the relationship.

Note:
In instances where a person becomes aware that children are engaging in sexual activity with each other, **there is still a mandatory duty to report** such reasonable grounds for believing that a sexual offence has been committed against a child.

Upon the making of said report, the responsibility would then lie with the police to determine whether it is a case wherein no charge would be made against the child, that is, whether it is a case which falls within section 20 of the Children Act.